

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7513

Petition of Department of Public Service to)
impose penalties and other remedial action upon)
Vermont Gas Systems, Inc. ("VGS"), re:)
probable violations of Vermont law, pertaining)
to gas safety, involving 31 separate locations)
installed, owned, operated and/or maintained by)
VGS)

Order entered: 11/16/2009

PROCEDURAL ORDER

On October 23, 2009, I issued an Order granting in part and denying in part a motion for summary judgment and a motion to dismiss by Vermont Gas Systems, Inc. ("VGS" or the "Company") in response to a Notice of Probable Violation ("NOPV") issued to the Company by the Vermont Department of Public Service (the "Department") on February 27, 2009. In that Order, I set a deadline of November 12, 2009, for the Department to respond to VGS' alternative request for relief pursuant to Board Rule 6.153 to suspend the operation of Board Rule 6.100 in this docket in favor of undertaking a clarifying rulemaking proceeding. I further ordered VGS to file any responsive comments by November 23, 2009. Finally, I also established a deadline of November 12, 2009, for the parties to submit a proposed procedural schedule for the next phase of this docket.

On October 29, 2009, the Department filed a letter raising a newly identified concern about a possible jurisdictional defect in this proceeding. The Department now suggests that, notwithstanding the scope of Board Rule 6.100, the Board may lack authority pursuant to 30 V.S.A. § 203 to assert subject-matter jurisdiction over the customer-owned pipe segments that are the subject of the Department's NOPV. The Department points out that Section 203 appears to confer subject-matter jurisdiction upon the Board only over property owned by the utilities

under its supervision, and not over property owned by the customers of these utilities. However, the Department also suggests that the jurisdictional concerns presented by Section 203 may be overcome by the Board's authority pursuant to 30 V.S.A. § 209(a)(3) to regulate the manner in which VGS conducts its business "to promote the safety, convenience and accommodation of the public." The Department did not state its position on whether sound subject-matter jurisdiction exists for the Board to adjudicate the alleged violations contained in the Department's NOPV. Instead, the Department expressed a desire to suspend the deadlines established in my Order of October 23, 2009 to give me "an opportunity to review this issue."¹

On November 4, 2009, VGS filed a letter seeking an opportunity to comment on the new subject-matter jurisdiction issue which the Department has raised for consideration.

The existence of sound subject-matter jurisdiction is indispensable for the legitimate exercise of any adjudicative authority by a tribunal. "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."² Therefore, given the imperative nature of ascertaining whether the Board has the necessary subject-matter jurisdiction to adjudicate the alleged violations contained in the Department's NOPV, I hereby modify the deadlines established in my Order of October 23, 2009, as follows:

December 4, 2009	The Department shall clarify whether or not it wishes to withdraw the NOPV for lack of Board subject-matter jurisdiction to adjudicate the claims pertaining to customer-owned property. If the Department chooses not to withdraw the NOPV, then it shall file a brief specifically identifying and explaining the legal grounds for invoking the Board's subject-matter jurisdiction in this proceeding. In this filing, the Department shall also respond to VGS' March 30, 2009, request for the alternative relief of suspending Board Rule 6.100.
December 18, 2009	VGS shall file a brief responding to the Department's December 4, 2009, filing.
January 2, 2010	The Department shall file a reply brief responding to VGS' December 18, 2009, filing.

1. Letter from Jeanne Elias, Esq., to Susan M. Hudson, dated October 29, 2009.

2. V.R.C.P. 12(h)(3).

All other deadlines previously scheduled are suspended until further notice.

SO ORDERED.

Dated at Montpelier, Vermont, this 16th day of November, 2009.

s/June E. Tierney
June E. Tierney, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: November 16, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)